

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10117 of 1998

with

SPECIAL CIVIL APPLICATION No 10412 of 1998

to

SPECIAL CIVIL APPLICATION No 10461 of 1998

with

SPECIAL CIVIL APPLICATIONS NO 10492 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SYNBIOTICS LIMITED

Versus

COMMISSIONER OF CENTRAL EXCISE & CUSTOMS

Appearance:

NANAVATI ASSOCIATES for Petitioners
MR PB MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE
Date of decision: 09/12/98

ORAL JUDGEMENT

#. Rule. Mr.P.B.Majmudar, Senior Standing Counsel appears and waives service of rule on behalf of the respondents. In the facts and circumstances of the case, all these matters are taken for final hearing.

#. All these petitions are filed against a common order passed in Stay No. E/Stay-982/98-Bom in Appeal No. E/1334/98-Bombaym by Customs, Excise and Gold (Control) Appellant Tribunal, West Zonal Bench at Mumbai (for short 'CEGAT') dated October 17, 1998.

#. Being aggrieved by the order passed by the original authority the petitioners preferred appeals. Along with these appeals, they filed applications for stay. Those applications came to be rejected by the impugned order. In para 4 CEGAT observed as under:

"We have considered the rival submissions. The fact whether particular product is marketable or not has to be looked in depth and it is difficult to come to any conclusion at prima facie stage. We cannot come to any conclusion about the prima facie case. The balance sheet as on 1996-97 is concerned it shows a lot of loss, viz. Rs.111/crores. To safeguard the revenue we direct that the appellants make take Rs.1.50 crores within two months from the date of receipt of this order. On such payment being made, there will be waiver of payment of remaining sum of the amounts and stay the recovery." (Emphasis supplied)

#. Mr.Nanavati, learned counsel for the petitioners raised various contentions. It is, however, not necessary for us to deal with the all questions raised before us. He is, however, right in contending that the tribunal has not applied its mind and has not recorded any finding regarding prima facie nature of the case and as to whether in the facts and circumstances of the case, the provisions relating to pre deposit can be dispensed with in accordance with Section 35 F of the Central Excise Act, 1944, (for short the 'Act'). The said section reads as under;

"Deposit, pending appeal, of duty demanded or penalty levied - Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authorities the duty demanded or the penalty levied :

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue."

#. Mr.Nanavati submitted that in the light of the provisions of Section 35-F of the Act, it was obligatory on the part of the tribunal to consider the facts of the case, points involved in appeals and to record a finding as to whether there was prima facie case in favour of the applicant and whether pre-deposit condition can be dispensed with. Looking to the order, the Tribunal has not recorded any finding regarding prima facie case in favour of the petitioner.

#. On this short ground alone, in our opinion, all the petitions should be allowed. The matters are required to be remanded to CEGAT. CEGAT will hear the parties and will pass an appropriate order considering the provisions of Section 35-F of the Act and will record its own finding on merits.

#. We state that we are not expressing any opinion on merits of the matter and it is open to the parties to raise all the contentions available to them at law.

#. During the pendency and disposal of stay applications, the authorities will not proceed for coercive recovery. CEGAT will decide stay applications as expeditiously as possible preferably within eight weeks from the receipt of the writ.

#. Petitions are allowed to the above extent. In the facts and circumstances of the case, no order as to

costs.

(C.K.Thakkar,J.)

Date : 9-12-1998 (A.L.Dave, J.)

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